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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Plaintiff

v.

KAISER ALUMINUM
WASHINGTON, LLC,
Defendant.

CIVIL ACTION NO.

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title I of the Americans with Disabilities Act, as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et. seq.*, (“ADA” and “ADAAA”) to correct unlawful employment practices on the basis of disability and to provide appropriate relief to Donald McMurray, who was adversely affected by such practices. The Equal Employment Opportunity Commission alleges that Kaiser Aluminum Washington, LLC, (“Defendant” or “Kaiser”) discriminated against Mr. McMurray, when it failed to hire Mr. McMurray for a production worker position at the Trentwood, Washington facility of Kaiser.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Section 107(a) of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12117(a), which incorporates by reference Sections 706(f)(1) and (3) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5(f)(1) and (3) (“Title VII”), and pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

1 6. At all relevant times, Defendant has been a covered entity under
2 Section 101(2) of the ADA, 42 U.S.C. § 12111(2).

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4 ADMINISTRATIVE PROCEDURES

5 7. More than thirty (30) days prior to the institution of this lawsuit,
6 Charging Party Donald McMurray filed a charge with the EEOC alleging
7 violations of Title I of the ADA by Defendant.
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9 8. On August 24, 2016, the Commission issued to Defendant a Letter of
10 Determination finding reasonable cause to believe that Title I of the ADA was
11 violated and inviting Defendant to join with the Commission in informal methods
12 of conciliation to endeavor to eliminate the discriminatory practices and provide
13 appropriate relief.
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16 9. The Commission engaged in communications with Defendant to
17 provide Defendant the opportunity to remedy the discriminatory practices
18 described in the Letter of Determination.
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20 10. The Commission was unable to secure from Defendant a conciliation
21 agreement acceptable to the Commission.
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STATEMENT OF CLAIMS

11. On September 26, 2016, the Commission issued to Defendant a Notice of Failure of Conciliation.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

13. Since at least September 4, 2014, Defendant has engaged in unlawful employment practices in violation of Section 102(a) of Title I of the ADA, 42 U.S.C. §§ 12112(a). Defendant discriminated against Mr. McMurray when it failed to hire him for a Production Worker Position at Kaiser's Trentwood facility in Eastern Washington in violation of Section 102(a) of the ADA.

14. Mr. McMurray is qualified for the Production Worker position because he has significant mechanical and construction experience. At the time of his application to Defendant on July 16, 2014, Mr. McMurray was working as a heavy machine operator. For this job, he regularly climbed in and out of large machinery and walked on uneven surfaces without accommodation.

15. Mr. McMurray is an individual with a disability under the law. Mr. McMurray has a record of disability from a workplace injury that took place in 2004. This record shows that McMurray's heel/foot injury substantially limited the major life activities of working, walking, and standing at that time.

1 16. Mr. McMurray applied for a Production Worker Position at Kaiser on
2 July 16, 2014.

3 17. On August 27, 2014, Kaiser offered Mr. McMurray the position
4 contingent upon successful completion of a pre-employment physical.
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6 18. On August 29, 2014, Mr. McMurray underwent a pre-employment
7 physical with Defendant's contractor Occupational Health Solutions, Inc. ("OHS").
8 Mr. McMurray successfully passed a breathalyzer test, a drug test, a vision test, a
9 hearing test and a reach and touch test administered by OHS. After Mr. McMurray
10 disclosed that his prior heel/foot injury, Defendant's contractor refused to conduct
11 the remainder of the physical examination without reviewing the medical records
12 from his prior injury.
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14 19. After receiving Mr. McMurray's 2004-2006 Medical Records, OHS
15 refused to allow Mr. McMurray to complete the remainder of the required physical
16 examination.
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18 20. On September 5, 2014, Defendant sent Mr. McMurray a letter
19 rescinding his offer of employment. Defendant made its decision not to hire Mr.
20 McMurray on the basis of his record of disability. At no time did Defendant or its
21 contractor assess Mr. McMurray's current ability to perform the job of Production
22 Worker.
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1 21. In addition, Defendant regarded Mr. McMurray as disabled in that it
2 denied him employment because of a perceived disability that was not transitory or
3 minor.

4 22. The effect of the practices complained of in paragraphs 13-21 above
5 has been to deprive Mr. McMurray of equal employment opportunities and
6 otherwise adversely affect his status as an employee.

7 23. The unlawful employment practices complained of in paragraphs 13-
8 21 above were and are intentional.

9 24. The unlawful employment practices complained of in paragraphs 13-
10 21 above were done with malice or with reckless indifference to the federally
11 protected rights of Mr. McMurray.

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15 PRAYER FOR RELIEF

16 Wherefore, the Commission respectfully requests that this Court:

17 A. Grant a permanent injunction enjoining Defendant, its officers, agents,
18 successors, assigns, and all persons in active concert or participation with it, from
19 unlawfully failing to provide equal employment opportunities to applicants for
20 employment and employees with disabilities and to accommodate applicants' and
21 employees' disabilities, and any other employment practice which discriminates on
22 the basis of disability.

1 B. Order Defendant to institute and carry out policies, practices, and
2 programs which provide equal employment opportunities for qualified individuals
3 with disabilities, and which eradicate the effects of its past and present unlawful
4 employment practices.
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6 C. Order Defendant to make whole Mr. McMurray by providing
7 appropriate back pay with interest, in amounts to be determined at trial, and other
8 affirmative relief necessary to eradicate the effects of its unlawful employment
9 practices.
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11 D. Order Defendant to make whole Mr. McMurray by providing
12 compensation for past and future pecuniary losses resulting from the unlawful
13 employment practices described in paragraphs 13-21 above, including past and
14 future out-of-pocket losses, in amounts to be determined at trial.
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16 E. Order Defendant to make whole Mr. McMurray by providing
17 compensation for past and future non-pecuniary losses resulting from the unlawful
18 practices complained of in paragraphs 13-21 above, including emotional pain,
19 suffering, inconvenience, loss of enjoyment of life, and humiliation, in amounts to
20 be determined at trial.
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1 F. Order Defendant to pay Mr. McMurray punitive damages for its
2 malicious or reckless conduct, as described in paragraphs 13-21 above, in amounts
3 to be determined at trial.

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5 G. Grant such further relief as the Court deems necessary and proper in
6 the public interest.

7 H. Award the Commission its costs of this action.

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JURY TRIAL DEMAND

The Commission requests a jury trial on all questions of fact raised by its complaint.

DATED this 30th day of September, 2016.

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